

PUBLIC STATEMENTS & REMARKS

Statement of Support by Commissioner Quintenz Regarding Part 190 Bankruptcy Regulations – Notice of Proposed Rulemaking

April 14, 2020

I am pleased to support today's proposal to amend the Commission's regulations governing the bankruptcy proceedings of commodity brokers.^[1] This proposal makes the first comprehensive change to these regulations since they were first issued in 1983. It marks another important step in Chairman Tarbert's agenda to update and make more efficient several critical areas of the Commission's regulations. I note that today's proposal was not hastily prepared in response to the market events surrounding the COVID-19 pandemic. Commission staff has been considering these amendments since 2017, when a subcommittee of the American Bar Association (ABA) requested that the Commission update the part 190 bankruptcy regulations.^[2] The ABA provided its proposal in response to the CFTC's Project KISS initiative, which generally requested input from the public on how the Commission's regulations could be simplified to reduce compliance burdens.^[3] I commend former Chairman Giancarlo for launching Project KISS because it is important for agencies periodically to review their regulations, some of which may not have been amended for many years, to ensure they are as targeted, rational, and transparent as possible, in light of new developments in the markets they affect. I am pleased that the Commission's rulemaking work continues despite the new challenges the agency is facing in light of the pandemic.

I would like to highlight a few aspects of today's proposal. First of all, the proposal reaffirms the special treatment the U.S. Bankruptcy Code affords to the customer account of an insolvent commodity broker, so that customers' positions can promptly be transferred.^[4] The Commission is proposing new rules for an insolvent DCO, which are similar to the rules applicable to an FCM. These rules take into account Title II of the Dodd-Frank Act, and I am pleased that the FDIC was consulted. Next, taking advantage of the Commission's experience with a few insolvent FCMs over the past decades, the proposal would provide increased deference to the trustee that a U.S. Bankruptcy Court appoints to oversee the proceedings of an insolvent commodity broker. This increased deference is intended to expedite the transfer of customer funds. In light of the Commission's experience from the bankruptcy of MF Global in 2011, proposed amendments would treat letters of credit equivalently to other collateral posted by customers, so that the *pro rata* distribution of customer property in the event of a shortfall in the customer account would apply equally to all collateral. The proposal also reflects experience from MF Global by dividing the delivery account into "physical delivery" and "cash delivery" account classes. Property other than cash is generally easier to trace, so it should have the benefit of a separate account class. Finally, the proposal's revised treatment of the "delivery account," applicable in the context of physically-settled futures and cleared swaps, would apply not only to tangible commodities, as is currently the case, but also to digital assets. This amendment will provide important legal certainty to the growing exchange-traded market for cleared, physically-settled, digital asset derivatives.

I look forward to reviewing the comments to this proposal, not only from FCMs and DCOs, but also from their diverse customer base, including asset managers, the agricultural community, energy firms, and other derivatives end-users.

-CFTC-

^[1] Part 190 of the Commission's regulations (17 C.F.R. 190).

[2] Proposal by the Part 190 Subcommittee of the Business Law Section of the Amer. Bar Assoc., dated Sept. 29, 2017, available at:

<https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61330&SearchText>

and

<https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61331&SearchText>.

[3] CFTC Requests Public Input on Simplifying Rules,

<https://www.cftc.gov/PressRoom/PressReleases/pr7555-17>.

[4] 11 U.S.C. § 761 et seq.